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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,908	09/27/2005	Jurgen Gendriesch	23393	4589
535	7590	12/12/2007		
K.F. ROSS P.C. 5683 RIVERDALE AVENUE SUITE 203 BOX 900 BRONX, NY 10471-0900			EXAMINER JACKSON, DANIELLE	
			ART UNIT 3636	PAPER NUMBER
			MAIL DATE 12/12/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/550,908	<b>Applicant(s)</b> GENDRIESCH ET AL.	
	<b>Examiner</b> Danielle Jackson	<b>Art Unit</b> 3636	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 7, 9-17, 20-22, 25, 27, 33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 9-17, 20-22, 25, 27, 33 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/27/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: The specification should not refer to specific claim numbers as claims may change during prosecution.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 12-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 12 recites the canopy being "variable by changing the axial position along the shaft of the canter and/or of the sleeves". The specification does not describe this feature in manner to as one of ordinary skill could understand how the canopy is variable.

Claim 13 recites the canopy is "freely shiftable at the shaft along the shaft according to how much the canopy is tensioned, the canopy being sealed at the center

to the shaft". The specification does not disclose the canopy as being freely shiftable and sealed to the shaft.

Claim 14 recites the canopy is "freely shiftable at the shaft..., the canopy being so cit or constructed at the center that it lightly touches or freely surrounds the shaft"; the specification does not describe these features.

Claim 15 recites the canopy "only lightly touches the shaft from below it or is spaced from it"; the specification does not mention how the canopy is attached to the shaft.

Claims 16 and 17 recite "due to a sewn-in strap or cable"; the specification does not describe how a sewn-in strap or cable would make the fold line straight or arcuate.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2, 11, 20, 25, 27 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2: It is unclear whether the "at least one arm" refers to the same arms recited in claim 1.

Claim 11: It is not understood what is meant by the phrase "one section of the canopy is replaced by a canopy-edge cable"; it sounds as if part of the umbrella is being replaced.

Claim 20: Claim 20 recites the limitation "the upper arms" and "the lower arms" in lines 3-4 and 5, respectively. There is insufficient antecedent basis for this limitation in the claim.

Claims 25, 27 and 34: These claims refer to the arm (30; FIG. 27(b), (c), (e) and (f)) as the structure located within the canopy, not wholly above it as claim in independent claim 1.

Further regarding claim 27, the phrase "the entire system assumes a stable position as a result of limits established by the static properties and geometry of the canopy (10) or its parts, in particular the canopy edge (11), the edge rods (15), the edge bow (16), or the edge cable (14) and/or by the cables (40) or diagonal spreaders (43)" is unclear. Also, the term "in particular" is confusing because it is not known whether the limitation follow said term are included in the claim interpretation.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Grissel (US-2,114,598).

Grissel discloses an umbrella used for protection against the weather, where any rain falling on said umbrella is deflected outward by a canopy (28), characterized in that arms (23) supporting the canopy are wholly above the canopy and do not pass through the canopy (FIG. 1).

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by McGuire (US-808,249).

McGuire discloses an umbrella used for protection against the weather, where any rain falling on said umbrella is deflected outward by a canopy, characterized in that arms (8) supporting the canopy are wholly above the canopy and do not pass through the canopy (FIG. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 3, 7, 9, 16, 20-22 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grissel (US-2,114,598) in view of Peake (US-3,252,469).

Claims 2, 3 and 21: Grissel is discussed above and includes the arms extending radially from and pivoted on the shaft and extending to edge of the canopy, but

lacks a shaft anchorable in or on the ground, however it is old and well-known to have an umbrella wherein the shaft anchors into the ground.

Gissel lacks a wavy canopy. Peake teaches an umbrella made of fabric (27) having corners defining alternating between an even number of high points and low points (FIG. 1) and having an outer edge. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Grissel to include a wavy canopy with high and low points, as suggested by Peake, in order to prevent the umbrella from becoming inverted during gusts of high winds.

Claim 7: Grissel shows a conical shaped umbrella.

Claim 9: Peake shows edge rods (11, 13, 15, 17) secured along the entire length on the canopy edge and being alternatively inclined to impart a wavy shape.

Claim 16: Grissel shows a canopy having a straight fold along the line between the canopy edge and the umbrella axis.

Claim 20: Grissel shows the upper arms (23) and the lower arms (15) intersecting the umbrella axis at different common points.

Claim 22: Grissel shows all of the arms (23) tensioned upward into positions necessary for the open position, but lacks diagonal spreaders. Peake shows arms (29) being held in an upward position by diagonal spreaders, the portion that extends between the arms and the shaft. It would of been obvious to include the diagonal spreaders to provide extra stability to the arms.

Claim 33: Peake shows the lengths  $a$  of the arms measured from the shaft where they engage to the respective diagonal spreaders and the lengths of the diagonal spreaders  $d$  is the same for all arms, where  $a + d = \text{constant}$  so that in particular umbrellas with upper arms and lower arms can be completely folded together.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grissel (US-2,114,598) in view of Peake (US-3,252,469) as applied to claim 2 above, and further in view of Zheng (US-6,460,556 B2).

The combination of Grissel and Peake is discussed above, but lacks an edge bow. Zheng shows a collapsible tent with side panels (34) that are tensioned by an elastic annularly closed canopy-edge bow (32), the edge bow being secured along the entire length of the canopy edge. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Grissel and Peake to include an elastic edge bow at the canopy edge, as suggested by Zheng, so that the canopy would occupy less space if collapsed for storage.

8. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grissel (US-2,114,598) in view of Peake (US-3,252,469) as applied to claim 2 above, and further in view of Nesbitt (US-3,24,581).

The combination of Grissel and Peake is discussed above, but lacks the arms being tensioned downward by diagonal spreaders. Nesbitt teaches a umbrella wherein the canopy is supported downwardly by arms (G) and diagonal spreaders (J). It would have been obvious to one of ordinary skill in the art at the



time the invention was made to modify the combination to include arms tensioned downwardly by diagonal spreaders, as suggested by Nesbitt, in order to provide extra stability to the arms

9. Claims 2, 12-14, 17, 27 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US-808,249) in view of Peake (US-3,252,469).

Claim 2: McGuire is discussed above and includes the arms extending radially from and pivoted on the shaft and extending to edge of the canopy, but lacks a shaft anchorable in or on the ground, however it is old and well-known to have an umbrella wherein the shaft anchors into the ground.

McGuire lacks a wavy canopy. Peake teaches an umbrella made of fabric (27) having corners defining alternating between an even number of high points and low points (FIG. 1) and having an outer edge. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify McGuire to include a wavy canopy with high and low points, as suggested by Peake, in order to prevent the umbrella from becoming inverted during gusts of high winds.

Claims 12-14: McGuire teaches the umbrella is freely shiftable at the shaft along the shaft by changing the axial position along the shaft by runner (13), the canopy being sealed or lightly touching the sleeve.

Claim 17: McGuire shows a canopy having an arcuate fold along the line between the canopy edge and the umbrella axis.

Claims 27 and 34: AS best understood, McGuire shows an umbrella having an opening and closing mechanism having a sleeve (13) on which all the arms (1) are pivoted, and that can move downward along the shaft (11) so that all the arms are pushed or pulled by cables (8) into position necessary for the open position until the canopy is fully tensioned and the entire system assumes a stable position as a result of the limits established by the static properties and geometry of the canopy or its parts. The sleeve raises the center of the canopy to assume a closed position.

***Allowable Subject Matter***

10. Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claim 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Application/Control Number:  
10/550,908  
Art Unit: 3636

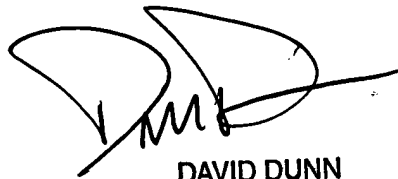
Page 10

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Jackson whose telephone number is (571) 272-2268. The examiner can normally be reached on Monday through Friday 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571) 272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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